IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

TUESDAY, THE 12TH DECEMBER 2006 / 21ST AGRAHAYANA 1928

WP(C).No. 32170 of 2005(D)

PETITIONER:

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1. RATHISH J.BABU, GITHESH BHAVAN,
NAGAMPADAM, KOTTAYAM-1.

2. SAJAN S. NAIR, JAI VIHAR,
PATHAMUTTOM P.O., KOTTAYAM-32.

3. MANOJ K.C., KAKKATHARA HOUSE,
KUDAVECHOOR P.O., VAIKOM.

4. BENNO JOSEPH, KAKKASHERIL HOUSE,
MEMMURI P.O., KOTTAYAM.

5. REJI E.S., EDAPPATTU HOUSE,
YENDAYAR P.O., MUNDAKKAYAM.

6. BIPINDAS K.P., KODACKAMATTOM,
VILLOONNI P.O., ARPOORKARA, KOTTAYAM.

7. LATHISH BABU R. NATHA,
PUTHIYATTIL HOUSE, KORATTY SOUTH P.O.,
TRICHUR DISTRICT.

8. VIJAYALAKSHMI A., CHIRAKKAROTTU HOUSE,
NEERVILAKOM P.O., CHENGANNUR-22.

9. VENUGOPAL S., KRISHNALAYAM,
ULLANOOR P.O., KULANADA,
PATHANAMTHITTA.

10. RESHMI PRADEEP, KIRAN VILLA,
KALIKAVU, PAKALOMATTOM P.O.,
KURAVILANGADU, KOTTAYAM-42.

11. SIJU K.C., KULAKKATTIL HOUSE,
MULLANKOLLI P.O., WAYANAD.

12. DEEPAK B.N., T.C.15/147, LALA BAGH ROAD,
D.P. JUNCTION, TRIVANDRUM-695014.

13. REKHA P. MATHW,

EDAPPALAKATTU HOUSSE, PIRAMADAM P.O., PAMPAKUDA,
ERNAKULAM DISTRICT, PIN-686 667.

14. MANJU ANNIE MATHEW,
K.P.12/261, KALATHIL ALMA BHAVAN, CHRIST NAGAR,
KUDAPPANAKUNNU P.O., TRIVANDRUM-41.

15. RAJANI P.K.,
POOTHAKUHIYIL, NAYARUPARA P.O., IDUKKI.

16. JAYAHARI G.,
PUTHUPARAYAIL HOUSE, MONIPALLY P.O.,
KOTTAYAM-686 636.

17. SWAPNA K.P., ARAKKAL HOUSSE,
H.B.COLONY, THIRUVENKITAM, GURUVAYOOR P.O.

BY ADV. SRI.DEVAN RAMACHANDRAN
SMT.T.G.SEETHAL

RESPONDENTS:
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1. THE KERALA STATE PUBLIC SERVICE
COMMISSION, THIRUVANANTHAPURAM, REPRESENTED BY
ITS SECRETARY.

2. THE STATE OF KERALA, REPRESENTED BY ITS
SECRETARY, GENERAL EDUCATION DEPARTMENT,
SECRETARIAT, TRIVANDRUM.

3. THE DIRECTOR, VOCATIONAL HIGHER
SECONDARY EDUCATION DEPARTMENT, TRIVANDRUM.

4. THE MAHATMA GANDHI UNIVERSITY,
KOTTAYAM, REPRESENTED BY ITS REGISTRAR.

ADDL. RESPONDENTS:

5. FAZIL K.S., PHERIYANDI HOUSE, KUTTIYADI P.O. KOZHIKODE.

6.ANIL KALAM, AGED 30, S/O. ABDUL KALAM, JAS MANZIL,
MANAKAD P.O., TRIVANDRUM.

7. DHINU CHANDRAN, AGED 30, S/O. C.K. CHANDRASEKHARAN NAIR,
CHANDRA NIVAS, ANCHAL MOODI P.O., KOLLAM DISTRICT.

8. NEEMA V., D/O. BALAKRISHNAN, CHIMMANTHARAYIL VEEDUM
P.O. VALLIKKUNNU, MALAPPURAM.

9. BABITH N.K., S/O. NARAYANANKUTTY, USHUS, DEVATHIYAL PARAMBU,
THENZHIPALAM, ,MALAPPURAM,

10. PRAJIL V., S/O. VIJAYAN, UMMANAL VEEDU, KARIMBARA P.O.,
KOOTHATTUKULAM, ERNAKULAM.

11. BIJINA K., D/O. KRISHNANKUTTY, H. NO.L-58, HOUSING BOARD, MUVATTUPUZHA, ERNAKULAM.

12. SHILEEJ P., 'KRISHNAKRIPA', PILAKKOT HOUSE, MANNUR P.O. KOZHIKODE DISTRICT.

13. BIJILA K., D/O. BALAKRISHNAN, KAPPURATH HOUSE, KOYILANDI, KOZHIKODE.

14. PRIYA V., D/O. PREMARAJAN V., NELLOOLI HOUSE, PUTHUR, PUTHIYANGADI P.O., KOZHIKODE.

15. SUDARSAN K.R., S/O. K.T.RAMAKRISHNAN, KTK HOUSE, CHEMBANODE P.O., PERUVANNAUZHI VIA., KOZHIKODE DIST.

16. SIJITH E., S/O. NARAYANAN, SIJITH NIVAS, PULLIPARAMBU P.O., MALAPPURAM DISTRICT.

(ADDL.R5 TO R7 IMPLEADED AS PER ORDER ON IA NO.7081/06 DATED 13.6.06
ADDL.R8 TO 13 IMPLEADED AS PER ORDER ON IA 18912/05 DT.12.12.06
ADDL.R14 TO R16 IMPLEADED AS PER ORDER ON IA 142/06 DT.12.12.06)

R1 BY S.C. SHRI P.C. SASIDHARAN,
R4 BY ADV. SHRI V.A. MOHAMMED
ADDL.R8 TO R16 BY ADV. SRI.K.K.BABU
ADDL.R5 TO R7 BY ADV. SRI.ESM.KABEER
R2 & R3 BY SHRI T.T. MUHAMOOD, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/8/2006, ALONG WITH WPC NO. 14825 OF 2006 THE COURT ON 12/12/2006 DELIVERED THE FOLLOWING:

ORDER ON I.A.NO.3378/06 IN WPC 32170/05

DISMISSED.

I.A.NOS.18912/05 & 142/06

ALLOWED

12/12/2006 SD/- A.K. BASHEER, JUDGE.

APPENDIX

EXT.P1-TRUE COPY OF THE STRUCTURE OF THE M.APP. SC. COURSE AND SCHEME OF EXAMINATION

EXT.P2-TRUE COPY OF THE LETTER DATED 15.6.2005 ISSUED BY R1 TO FIRST PETITIONER ASKING FOR PRODUCTION OF EQUIVALENCY CERTIFICAT

EXT.P3-TRUE COPY OF THE CERTIFICATE DATED 21.6.2005 ISSUED BY R4

EXT.P4-TRUE COPY OF EXPERIENCE CERTIFICATE DATED 11.4.2003 ISSUED BY GOVERNMENT H.S.S. NATTAKOM TO FIFTH PETITIONERs

EXT.P5-TRUE COPY OF GOVERNMENT ORDER DATED 16.5.2000

EXT.P6-TRUE COPY OF THE ORDER DATED 20.11.1998

EXT.P7-TRUE COPY OF ORDER ISSUED BY R2

EXT.P8-TRUE COPY OF LIST PUBLISHED BY R1

EXT.P9-TRUE COPY OF THE ORDER ISSUED BY R2 DATED 5.5.2006

EXT.P10-TRUE COPY OF THE COURSE CONTENT OF B.SC. PRINTING TECHNOLOGY COURSE OF THE UNIVERSITY OF CALICUT.

// TRUE COPY //

A. K. Basheer, J.

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W.P.(C)Nos.32170/2005-D & 14825/2006-M

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Dated this the 12th day of December, 2006.

JUDGMENT

Is the Kerala Public Service Commission justified in refusing to consider candidates holding Master's degree in Applied Sciences (Publishing Science and Printing Technology) for selection to the post of Vocational Teacher in Printing Technology in the Department of Kerala Vocational Higher Secondary Education?

2. A Brief reference to the essential facts is necessary to answer the above question.

3. On October 12, 2004 the Kerala Public Service Commission (for short 'the Commission') issued a notification inviting applications from eligible candidates for appointment to the post of Vocational Teachers in Printing Technology in the department mentioned above. The prescribed qualification is extracted hereunder:

> "Degree in Printing Technology with not less than 60% marks from any of the Universities in Kerala or an equivalent qualification."

Petitioners in Writ Petition No.32170/2005 have admittedly obtained post-graduate degree in Applied Sciences in Publishing Science and Printing Technology from Mahatma Gandhi University. On receipt of applications submitted by the petitioners, the Commission informed them that their candidature would be considered only if they produced an equivalency certificate to show that their qualification was equivalent to the qualification prescribed in the notification, viz. Degree in Printing Technology. According to the petitioners, they

produced Ext.P3 certificate issued by the Registrar of Mahatma Gandhi University stating that "the Master of Applied Science (Publishing Science and Printing Technology) Degree holders can be considered for selection as Vocational Teacher in Printing Technology as it is a professional P.G. Course, a unique combination of Publishing and Printing designed to cater to the commercial and technical demands with a syllabus covering all major portions."

4. The Commission was not apparently impressed. Therefore, the petitioners were not invited for interview. It is at that stage that Writ Petition No.32170/2005 has been filed praying for issuance of a writ of mandamus or such other appropriate writ or direction to the Commission "to allow the petitioners to be considered for selection to the post of Vocational Teachers in Printing Technology" on the basis of Ext.P3 certificate. There is a further prayer for a declaration that the post-graduate degree obtained by the petitioners is equivalent to the qualification prescribed in the notification.

5. Petitioners in Writ Petition No.14825/2006 (hereinafter referred to as graduates in Printing Technology) who have apparently got the prescribed qualification in Printing Technology, claim that they have been included in the ranked list published by the Commission. They pray for issuance of a writ of mandamus or such other appropriate writ or direction to the Commission to issue advice memo to them for appointment. These petitioners have also sought for issuance of a writ of certiorari to quash the orders issued by the Government (Exts.P3 and P4 in this writ petition) holding that Master's Degree in Publishing Science and Printing Technology is equivalent to the degree in Printing Technology for the purpose of selection and appointment to the post of Vocational Teacher.

6. It is contended by the petitioners that the structure and content

of the two year post-graduate course completed by them will undoubtedly be sufficient to cater to the requisite para-meters envisaged for the teaching faculty in Printing Technology in the Vocational Higher Secondary Schools. Laying heavy emphasis on the syllabus for the two year post-graduate course, it is contended on behalf of the petitioners that the degree obtained by them is in no way inferior to the degree prescribed for the post. It is also pointed out that the syllabus for their graduate study included Printing Technology in addition to Publishing Science. Therefore, the stand taken by the Commission that only graduates in Printing Technology can be considered for selection, cannot be countenanced at all. Petitioners have also placed heavy reliance on Ext.P3 certificate issued by the Mahatma Gandhi University in which it is stated that the Master's degree is a "unique combination of Publishing and Printing designed to cater to the commercial and technical demands with a syllabus covering all major portions."

7. In this context, petitioners have also relied on Ext.P6 letter issued by the Government on November 20, 1998. In this communication the Registrar of the University was informed that "a qualification which has been declared as equivalent to a qualification specified in the special rules for the post and such of those higher qualifications which pre-suppose the acquisition of the lower qualification prescribed for the post as sufficient to the post." In this communication, the Government further queried the University why separate recognition was necessary to the Master of Applied Sciences course.

8. In response to the above contentions, the Commission asserted that so long as the petitioners did not possess the qualification prescribed in the notification, they cannot be heard to say that the

Master's degree obtained by them (in a combination of two subjects of which Printing Technology is one), should be treated as equivalent. The Commission further contended that Ext.P3 certificate issued by the University can be of no avail to the petitioners since the Commission is bound to follow the special rules and the qualifications prescribed therein. It was for the State Government to declare another qualification as equivalent to the prescribed qualification.

9. Apparently, taking cue from the above contention, petitioners persuaded this court to issue a direction to the Government "to take a decision on the issue as to whether the degree of M. App. Sc. (Publishing Science and Printing Technology) offered by the Mahatma Gandhi University is equivalent to Printing Technology required as per the notification issued by the Commission."

10. On January 5, 2006 Government issued Ext.P7 order (by mistake it has been marked as Ext.P6 in Writ Petition No.32170/2005) as G.O.(MS) No.07/06/Gl. Edn. The concluding paragraph of the above order reads thus:

> " In the circumstances considering the direction of the Hon'ble Court and the request of the petitioners Government are pleased to order that the qualifications prescribed for the post of Vocational Teacher in Printing Technology be modified by incorporating Master of Applied Science in Publishing Science and Printing Technology with not less than 50% marks awarded from any of the Universities in Kerala or equivalent as an alternate qualification to the existing one with effect from 12.3.2004 subject to amendment of Special Rules. Formal statutory orders amending the Special Rules

in this regard will be issued in due course."

11. Apparently not satisfied with the above order, petitioners moved another application as I.A. No.3378/2006 praying for a direction to the Government to consider the question of equivalency of the Master's degree "for the purpose of selection and appointment to the post of Vocational Teacher in Printing Technology".

12. The Government readily obliged and ordered that M. App. Sc. in Publishing Science and Printing Technology is an equivalent qualification to the B.Sc. Printing Technology Degree for the purpose of selection and appointment to the post of Vocational Teacher in Printing Technology in Vocational Higher Secondary Education Department. Ext. P9 is the true photocopy of the above order. (The degree holders have sought to quash the above two orders which are marked as Exts.P3 and P4 in their writ petition (W.P.No.14825/2006.)

13. The short question that falls for consideration in the backdrop of the above facts and circumstances is whether the action of the Government is legally valid and sustainable. In my view, the answer has to be in the negative.

14. It is pertinent to note that Commission had notified Degree in Printing Technology as the requisite qualification for the post. It is true that it was mentioned in the notification that candidates with equivalent qualification would also be eligible for appointment. Admittedly, M. App. Sc.. in Publishing Science and Printing Technology had not been recognised as an equivalent qualification at the time when the notification was issued by the Commission. It is also not in dispute that the special rules did not prescribe the above qualification as equivalent to the Degree in Printing Technology. So long as the special rules were not amended by the Government, the stand taken by the Commission can not be faulted at all.

15. It is the settled position of law that the eligibility criteria as prescribed in the relevant special rules cannot be amended or modified after issuing the notification inviting applications from eligible candidates. The Supreme Court as well as this court have repeatedly held that amendment of the prescribed qualifications and/or modification of conditions of recruitment, midway through the selection process is not permissible at all. Once the selection process gets underway, it has to be completed in terms of the conditions and stipulations contained in the notification. If the appointing authority or the recruiting agency is allowed to meddle with the qualifications or other conditions of appointment in the course of the ongoing process of selection, it will give room for favoritism, nepotism and other illegitimate practices affecting the rights of those who had submitted their applications with the expectation that the criteria for appointment as indicated in the notification would be strictly adhered to.

16. Yet another disastrous consequence will be that several candidates with alternate qualifications who might have refrained from applying for the post under the belief that they were not eligible to get appointment would lose their opportunity to get employment. The result would be that many candidates with alternate qualifications would be denied an opportunity to apply for the post. Any recruitment process for public employment must be held in a fair and equitable manner with utmost transparency. The notification to be issued by a public authority like the Commission at the behest of the appointing authority, is a document placed before the public for their scrutiny. The job seekers respond to the notification in utmost faith in the transparency that is expected of such competent authorities. The faith and confidence that millions of youth in this country repose in public authorities should not be allowed to be eroded or belied. Once the

process of selection starts with the publication of the notification, it should be allowed to culminate in terms of the clauses or conditions contained in the said notification. Neither the recruiting agency nor the appointing authority should be allowed to intervene midstream, and change the terms and conditions of appointment or qualifications of the candidates. This is especially so if the qualifications prescribed for appointment are in accord with the relevant special rules.

17. In this context, it is pertinent to note that the petitioners admit that the qualification possessed by them, viz. M. App. Sc.. in Publishing Science and Printing Technology has not been prescribed as an eligible qualification for appointment to the post in question. Significantly, Government is also aware that the special rules have to be amended in order to make the petitioners eligible for selection to the post in question, even though the degree obtained by them has now been declared to be equivalent to Bachelor's Degree in Printing Technology. This is made clear by the Government in Ext.P7 itself. Though it has been stated in Ext.P7 order that formal statutory orders amending the special rules would be issued in due course, the Government had not taken any steps in this direction. Even assuming such an amendment in the post-notification scenario would have saved the situation for the petitioners, it cannot be held that they would get the benefit of Ext.P7 and P9 orders since the said orders would not have any retrospectivity. It is significant to note that Ext.P7 order was issued by the Government in January 2006. More significantly, on May 5, 2006 the Government came out with Ext.P9 order (mistakenly marked as Ext.P8) declaring that M. App. Sc.. in Publishing Science and Printing Technology degree is equivalent to the B.Sc. Printing Technology Degree for the purpose of selection and appointment to the post of Vocational Teacher in Printing Technology in Vocational

Higher Secondary Education Department. In my view, petitioners will not get the benefit of Exts.P7 and P9 orders issued by the Government for the simple reason that concededly the Special Rules have not been amended so far.

18. Learned counsel for the petitioners have pointed out that the Commission in its counter affidavit had accepted and recognised the authority of the Government to amend or modify the qualification and to declare any other qualification as equivalent to the prescribed qualification. According to the petitioners, since the Government has now declared that the Master's degree obtained by the petitioners is equivalent to the prescribed qualification, the Commission is precluded from taking up the stand that petitioners are not eligible for appointment. I am afraid the above contention is also liable to be repelled. As mentioned earlier, while issuing the declaration contained in Ext.P7, the Government had made it clear that incorporation of the qualification obtained by the petitioners as an alternate qualification in the notification will be subject to amendment of the Special Rules. Therefore, so long as the Special Rules have not been amended, the subsequent incorporation or addition of the alternate qualification in the notification has to be treated as non-est as far as this case is concerned.

19. Resultantly, it has to be held that petitioners would not be entitled to be considered for selection pursuant to the notification. I hasten to add that I have not considered the relative merit of the two degrees in question, viz. Bachelor's Degree in Printing Technology and M. App. Sc.. in Publishing Science and Printing Technology. Several materials have been placed on record by the petitioners and the graduates in support of their respective contentions. Since it has been found that the alternate qualification obtained by the petitioners has not

been incorporated in the Special Rules and also since the declaration of equivalency was made by the Government in Exts.P7 and P9 after publication of the notification and that too after completing the process of selection, I am satisfied that the petitioners are not entitled to get any relief in the writ petition.

20. It is true that the notification did in fact refer to an "equivalent qualification". But neither the Commission nor the Government had indicated what the equivalent qualification was. This should have been done by the Government at the earliest point of time. It is pertinent to note that the notification was issued as early as in October 2004. The alternate qualification (M. App.Sc.) was ordered to be incorporated only in January 2006. Worse still, the declaration of equivalency was made by the government only in May 2006. By this time, the selection process had been completed. The ranked list had been published by the Commission in December 2005 itself (Ext.P8).

21. Having regard to the entire facts and circumstances, I am satisfied that Exts.P7 and P9 (Exts.P3 and P4 in Writ Petition No.14825/2006) are liable to be quashed. I do so. However, it is made clear that I have not considered the question whether Master of Applied Sciences in Publishing Science and Printing Technology is liable to be treated as equivalent to Bachelor's Degree in Printing Technology since the said question has become irrelevant in these writ petitions because:

(a) The declaration of equivalency was made by the Government long after the publication of the notification;

(b) The Special Rules were not amended by the Government which was made a pre-condition

for issuing Exts.P7 and P9 orders; and

© The Special Rules did not prescribe such an alternate qualification.

20. Resultantly, Writ Petition No.32170/2005 fails and it is accordingly dismissed.

Writ Petition No.14825/2006 is disposed of with a direction to respondent No.3 to issue advice memo to the candidates eligible for appointment in terms of the ranked list, without any further delay.

(A.K. Basheer)

Judge.

Kav/